



3627
JFW

PTO/SB/21 (09-04) Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/672,435
Filing Date	09/28/2000
First Named Inventor	John Kenyon Gerken III
Art Unit	3627
Examiner Name	Marissa Thein
Attorney Docket Number	RAL920000034US1

ENCLOSURES (Check all that apply)																		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Response to Notification of Non-Compliant Appeal Brief; Return Postcard																
Remarks																		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT <table border="1"> <tr> <td>Firm Name</td> <td colspan="3">Winstead Sehestre & Minick, P.C.</td> </tr> <tr> <td>Signature</td> <td colspan="3"></td> </tr> <tr> <td>Printed name</td> <td colspan="3">Robert A. Voigt, Jr.</td> </tr> <tr> <td>Date</td> <td>11/22/2005</td> <td>Reg. No.</td> <td>47,159</td> </tr> </table>			Firm Name	Winstead Sehestre & Minick, P.C.			Signature				Printed name	Robert A. Voigt, Jr.			Date	11/22/2005	Reg. No.	47,159
Firm Name	Winstead Sehestre & Minick, P.C.																	
Signature																		
Printed name	Robert A. Voigt, Jr.																	
Date	11/22/2005	Reg. No.	47,159															

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Toni Stanley	Date	11/22/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



RAL9-2000-0034US1

PATENT

- 1 -

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Before the Examiner:
Gerken et al.	:	Marissa Thein
Serial No.: 09/672,435	:	Group Art Unit: 3627
Filed: September 28, 2000	:	IBM Corporation
Title: CUSTOMER CHECKOUT	:	P.O. Box 12915
ACCELERATOR	:	Dept. 9CCA, Bldg. 002
	:	Research Triangle Park, NC 27709

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notification of Non-Compliant Appeal Brief having a mailing date of November 2, 2005, with a time for response set to expire on December 2, 2005, Appellants respond as follows:

CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence (along with any item referred to as being enclosed herewith) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 2, 2005.



Signature

Toni Stanley
(Printed name of person certifying)

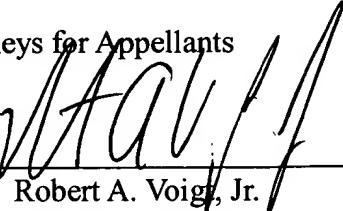
The Examiner asserts that Appellants' Appeal Brief ("Second Supplemental Amended Appeal Brief") with a mailing date of August 5, 2005 does not contain all the items required under 37 C.F.R. §41.37. Appellants have already submitted an Appeal Brief ("Replacement Appeal Brief That Consolidates All Previous Appeal Briefs and is in Conformity with 37 C.F.R. §41.37") on October 26, 2005. Appellants believe that this Appeal Brief addresses this notification of non-compliant appeal brief and therefore respectfully request the Examiner to withdraw this notice of non-compliance.

Appellants hope that there are no more delays to having this case reviewed by the Board. The previous Examiner on this case (Examiner McClellan) had reopened prosecution multiple times (3 times) because according to Examiner McClellan the other supervisory patent examiners in the pre-trial conference told Examiner McClellan that they cannot win on appeal. According to Examiner McClellan, he was further informed to just find another reference to substitute one of the cited references and reopen prosecution. It appears quite clearly that the Examiners on this case have only the goal of delaying having the Board review this case. This type of activity is unacceptable and results in giving the Patent Office a bad reputation. If such activity continues, Appellants will have no choice but to contact either U.S. Commerce Secretary Carlos Gutierrez or the Director of the United States Patent and Trademark Office Jon Dudas regarding this long and unnecessary process.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Appellants

By: 

Robert A. Voigt, Jr.

Reg. No. 47,159

Kelly K. Kordzik

Reg. No. 36,571

P.O. Box 50784
Dallas, Texas 75201
(512)370-2832

297148v.1